

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4092 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MILLIONS AUTO BLINKS PVT LTD.

Versus

UNION OF INDIA  
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Appearance:

M/S TRIVEDI & GUPTA for Petitioners  
MR MUKESH R SHAH for Respondent No 1  
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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

Date of decision: 06/08/1999

ORAL JUDGEMENT

Rule. Mr. M.R.Shah ,learned counsel appears and waives service of Rule on behalf of respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition filed against the order passed on stay application . It was the case of the petitioner that against the order in original, an appeal was filed which is pending. Along with appeal, a stay application was made which came to be rejected. The grievance of the petitioner is that the appellate authority while disposing of the stay application, has committed an error of law in directing the petitioner to calculate excise on the basis of heading 8512 instead of 8714. In the alternative, it was contended that no retrospective effect could have been given to such decision inasmuch as notice was issued on June 16, 1997 and the petitioner was called upon to pay duty for the period between January and May, 1997.

In our opinion, the point deserves prima facie consideration and it deserves to be decided by the appellate authority. Expressing opinion one way or the other at this stage may cause prejudice to either party. In these circumstances, we are of the view that we should not express any opinion on merits on the question. It is in the interest of justice if we direct the appellate authority to decide the appeal without insisting for amount of predeposit.

For the foregoing reasons, petition is allowed. Appellate authority is directed to decide the appeal in accordance with law without insisting for predeposit. Petition is allowed to the aforesaid extent. Rule made absolute to the aforesaid extent. No order as to cost. It goes without saying that in view of the order passed by us, department will not take any action of recovery.

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parekh